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No. 93-759

Supreme Court, U.S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1993

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EVALYN JORDAN HESTER, ET AL., PETITIONERS

*v.*

NATIONSBANK, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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## BRIEF FOR THE FEDERAL DEPOSIT INSURANCE CORPORATION IN OPPOSITION

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## QUESTION PRESENTED

Whether the court of appeals erred in determining that the existence of a confirmed reorganization plan under Chapter 11 of the Bankruptcy Code resolved petitioners' lender liability suit against a failed bank.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A4-A28) is unpublished, but the decision is noted at 4 F.3d 990 (Table). The orders of the district court (Pet. App. A39-A65) are unreported.

### JURISDICTION

The judgment of the court of appeals was entered on August 31, 1993. The petition for a writ of certiorari was filed on November 12, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. a. In July, 1987, petitioner Evalynn Jordan Hester and her husband, Bayless Milton Hester, III, now deceased (the Hesters), filed a lender liability lawsuit against First RepublicBank Wichita Falls, N.A. (First RepublicBank) and its president, respondent Joseph N. Prothro, in Texas state court. On July 29, 1988, the Comptroller of the Currency declared First RepublicBank insolvent and appointed the Federal Deposit Insurance Corporation (FDIC) as the bank's receiver. The FDIC transferred certain assets of First RepublicBank, including a claim against the Hesters based on a promissory note, to NCNB Texas National Bank (NCNB Texas), now NationsBank. Any liability First RepublicBank may have had to the Hesters was retained by the FDIC. In August, 1988, NCNB Texas and the FDIC intervened in the lender liability suit and removed the case to the United States District Court for the Northern District of Texas. Pet. App. A11; FDIC C.A. Br. in Nos. 92-9034, 92-9088 and 93-1068 (FDIC C.A. Br.) at 3.

b. Meanwhile, in August, 1987, the Hesters filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Texas. Four years later, in April, 1991, the bankruptcy court entered an order confirming a plan of reorganization in that case. Pet. App. A11; FDIC C.A. Br. 4. As part of the reorganization plan, the court approved a mutual release and settlement agreement between petitioners and NCNB Texas, FDIC, and respondent Prothro. Pet. App. A68-A77. The reorganization plan also resolved NCNB Texas's promissory note claim against petitioners with the payment of certain monies, the conveyance of various

oil and gas properties, and the dismissal of the Hesters' lender liability suit with prejudice. Pet. App. A11-A12; FDIC C.A. Br. 4.

Petitioners appealed the order confirming the reorganization plan to the district court. The district court dismissed petitioners' appeal for want of prosecution, and the court of appeals affirmed in October, 1992. Pet. App. A29-A35.

c. Meanwhile, in January, 1992, the district court entered an order closing the lender liability suit but permitting the parties to reopen that suit if the lender liability claims were not resolved in the bankruptcy case. Pet. App. A56-A57. Petitioners appealed, but the court of appeals dismissed their appeal for want of jurisdiction on June 8, 1992. *Id.* at A37-A38.

d. In March, 1992, petitioners filed a complaint seeking to revoke the reorganization plan previously entered in the bankruptcy case, alleging certain wrongdoing on the part of the attorneys and others involved in that case. The bankruptcy court dismissed that complaint and imposed sanctions on petitioners for violations of Bankruptcy Rule 9011. The district court affirmed, and also issued an order precluding petitioners from filing further pleadings without leave of court. Pet. App. A12-A13, A60-A62.

2. Petitioners filed numerous notices of appeal from the district court's rulings, and the court of appeals affirmed. Pet. App. A4-A28. The court first dismissed several of petitioners' appeals for lack of jurisdiction because petitioners sought to challenge interlocutory orders that had not been certified for appeal. *Id.* at A13-A14. The court of appeals next held that petitioners' appeals from the district court's

decision to close the lender liability case were barred by res judicata. The court explained that the lender liability case had been resolved by the order confirming the reorganization plan, and petitioners' previous appeal from that order had been dismissed. *Id.* at A14-A16.

The court of appeals also rejected petitioners' challenge to the dismissal of their complaint alleging fraud in the preparation of the reorganization plan and seeking revocation of that plan. The court noted that petitioners had failed to comply with the bankruptcy court's order for a more definite statement, and concluded that dismissal was therefore appropriate. *Id.* at A16-A18. In addition, the court upheld the bankruptcy court's imposition of sanctions on petitioners, noting that petitioners had improperly attempted to relitigate issues that had been fully adjudicated in prior proceedings. *Id.* at A18-A20. Finally, the court of appeals concluded that the district court's orders controlling the filing of further frivolous pleadings by petitioners were "an appropriate exercise of the district court's discretion to manage its caseload and to prevent repetitious pleadings." *Id.* at A26.

## ARGUMENT

1. Petitioners apparently contend (Pet. 62) that the court of appeals erred in finding that the confirmation of the reorganization plan resolved the lender liability suit filed against First RepublicBank. The court of appeals, however, correctly determined that res judicata barred petitioners' attempt to relitigate issues relating to the lender liability suit. That holding does not conflict with any decisions of

this Court or any other court of appeals. Further review is therefore not warranted.

An order confirming a plan of reorganization is a final judgment for purposes of res judicata. See *Stoll* v. *Gottlieb*, 305 U.S. 165, 170-171 (1938); *Republic Supply Co.* v. *Shoaf*, 815 F.2d 1046, 1053 (5th Cir. 1987). The lender liability suit was settled as part of petitioners' reorganization plan, and petitioners' appeal from the approval of the plan was dismissed. Thus, the court of appeals was entirely justified in concluding that petitioners' lender liability suit was barred by res judicata.

The law is well established that "a bankruptcy judgment bars a subsequent suit if: 1) both cases involve the same parties; 2) the prior judgment was rendered by a court of competent jurisdiction; 3) the prior decision was a final judgment on the merits; and 4) the same cause of action is at issue in both cases." *In re Baudoin*, 981 F.2d 736, 740 (5th Cir. 1993). In the instant case, as the court of appeals found, all four prerequisites to the application of res judicata were satisfied.

First, both the lender liability suit and the bankruptcy case involve the same parties. Petitioners have always been both the plaintiffs in the lender liability suit and the debtors in the bankruptcy action. NCNB Texas was both a defendant in the lender liability suit (as was the FDIC) and a creditor in the bankruptcy proceeding.

Second, because the lender liability suit was an asset of the bankruptcy estate, the resolution of the suit was within the bankruptcy court's jurisdiction. See *In re Baudoin*, 981 F.2d at 740-742. Thus, the

judgment confirming the reorganization plan was rendered by a court of competent jurisdiction.

Third, approval of a bankruptcy reorganization plan constitutes a final judgment on the merits. *Eubanks* v. *FDIC*, 977 F.2d 166, 170 (5th Cir. 1992). And finally, petitioners seek to reopen the lender liability suit and proceed on the very cause of action that was at issue in the bankruptcy reorganization. Accordingly, the court of appeals properly applied the doctrine of res judicata to bar petitioners' attempt to reopen the lender liability suit.

2. Petitioners appear to challenge (Pet. 61-62) a number of case management orders entered by the bankruptcy court and the district court. To the extent petitioners seek to challenge orders relating to the lender liability suit or the confirmation of the reorganization plan, their claims are barred by res judicata. The remaining orders complained of were well within the discretion of the lower courts and were properly affirmed by the court of appeals.

District courts enjoy broad discretion in controlling their dockets and supervising ongoing litigation. See *National Hockey League* v. *Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642-643 (1976) (per curiam); *Pierce* v. *Underwood*, 487 U.S. 552, 557-558 & n.1 (1988). Here, as the court of appeals found (Pet. App. A25-A26), petitioners had filed "voluminous rambling, incoherent pleadings" and in excess of 50 appeals in the district court and court of appeals. District courts possess the power to restrain the filing of further pleadings by overly litigious parties when, as here, those parties have had a full and fair opportunity to litigate their claims. See *Harrelson* v. *United States*, 613 F.2d 114, 116 (5th Cir. 1980); *Ruderer* v.

*United States*, 462 F.2d 897, 899 (8th Cir.), appeal dismissed, 409 U.S. 1031 (1972).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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